



07 DEC 2007

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In re Application of: :
YAN et al. :
U.S. Application No.: 10/577,382 :
PCT No.: PCT/US04/36173 :
International Filing Date: 28 October 2004 :
Priority Date: 31 October 2003 :
Attorney's Docket No.: 68548-PCT-US/JPW/JW :
For: METHODS FOR REDUCING :
SEIZURE-INDUCED NEURONAL :
DAMAGE :

DECISION ON PETITION
UNDER 37 CFR 1.181

This decision is issued in response to the "Communication in Response To September 4, 2007 Notification Of Defective Response" filed 09 October 2007, which is being treated as a request to accept the declaration filed 12 April 2007 under 37 CFR 1.181. No petition fee is required.

BACKGROUND

On 28 October 2004, applicants filed international application PCT/US04/36173 which claimed a priority date of 31 October 2003 and which designated the United States. The deadline for submitting the basic national fee was thirty months from the priority date, i.e., 01 May 2006.

On 27 April 2006, applicants filed a transmittal letter for entry into the national stage in the United States accompanied by, among other materials, payment of the basic national fee.

On 08 January 2007, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Missing Requirements Under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497 was required. Furthermore, the Notification indicated that a Sequence Listing had not been filed as required by 37 CFR 1.821(c) and (e).

On 12 April 2007, applicants filed a "Communication in Response to January 8, 2007 Notification of Missing Requirements under 35 U.S.C. 371 in the United States Designated/Elected Office and Petition for a One-Month Extension of Time" which included five pages of declaration materials and a statement that "the subject application does not contain any nucleotide or amino acid sequences as defined in 37 CFR 1.821."

On 04 September 2007, the DO/EO/US mailed a Notification Of Defective Response (Form PCT/DO/EO/916) indicating that the filed declaration was defective because "the declaration document appears to be a compilation of a number of separate declaration documents." The Notification indicated that the failure to file a proper response within one month would result in abandonment of the application.

On 09 October 2007, applicants filed the Response considered herein. The response was not accompanied by a revised oath or declaration. Rather, the response consists of an argument by applicants that the previously filed declaration was in an acceptable form.

DISCUSSION

In applicants' response to the Notification Of Defective Response, counsel asserts that the five pages filed 12 April 2007 were a single document and that the declaration therefore satisfies the requirements of 37 CFR 1.497. However, a review of the filed declaration materials contradicts the assertion that the document is a single, five-page declaration.

The filed declaration materials consist of:

- (1) a first page, identified as "Declaration and Power of Attorney," that identifies the application and sets forth the priority claim under 35 U.S.C. 119(a)-(d);
- (2) a page, identified as "Page 2" that identifies the application and sets forth the priority claim under 35 U.S.C. 119(e);
- (3) a page, identified as "Page 3" which is executed by Shi Du YAN. This page identifies Shi Du YAN as the first inventor, Guy MCKHANN as the second inventor, and David STERN as the third inventor;
- (4) another page, identified as "Page 3" which is executed by Guy MCKHANN. This page identifies Shi Du YAN as the first inventor, Guy MCKHANN as the second inventor, and David STERN as the third inventor; and
- (5) another page, identified as "Page 3" which is executed by David STERN. This page identifies Shi Du YAN as the first inventor, Guy MCKHANN as the second inventor, and David STERN as the third inventor.

Thus, the five page submission consists of Page 1, Page 2, and three signature pages identified as "Page 3." Counsel avers that "each inventor was given a copy of the same declaration containing a complete listing of all inventors for his or her signature." Based on the above statement, it appears that counsel subsequently compiled the declaration into a single document, which is improper. Under these circumstances, the five pages of declaration materials filed 12 April 2007 cannot be treated as a single document. In addition, these materials cannot be accepted as a compilation of separate, complete declaration documents (see MPEP § 201.03, page 200-7: "Where individual declarations are

executed, they must be submitted as individual declarations rather than combined into one declaration"). Accordingly, the declaration filed 08 January 2003 remains unacceptable under 37 CFR 1.497.

Because applicants failed to submit a proper response to the Notification Of A Defective Response, this application became abandoned as of midnight on 04 September 2007.

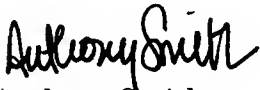
CONCLUSION

Applicants request is REFUSED and this application is ABANDONED.

The application materials filed by applicant cannot be considered as a single document and such materials do not constitute an acceptable declaration in compliance with 37 CFR 1.497.

Applicants have failed to file a proper response to the Notification Of A Defective Response mailed 04 September 2007.

The application is being forwarded to the National Stage Processing Branch of the Office Of PCT Operations for further processing in accord with this decision, specifically, the issuance of a Notification Of Abandonment (Form PCT/DO/EO/909).



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